

**Assembly Bill No. 64**

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Passed the Assembly September 12, 2009

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*Chief Clerk of the Assembly*

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Passed the Senate September 11, 2009

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to add Section 705 to the Fish and Game Code, to amend Sections 25740.5, 25742, 25746, 25747, and 25751 of, and to add Section 25500.1 to, the Public Resources Code, and to amend Sections 399.2.5 and 454.5 of, to add Sections 399.13, 399.26, and 1005.1 to, and to repeal and add Section 399.14 of, the Public Utilities Code, relating to energy.

## LEGISLATIVE COUNSEL'S DIGEST

AB 64, Krekorian. Energy: renewable energy resources: generation and transmission.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law requires the PUC to require the state's 3 largest electrical corporations, Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing PUC resolutions refer to the nonbypassable rate component as a "public goods charge." The public goods charge moneys are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission). Existing law establishes the Renewable Resource Trust Fund as a fund that is continuously appropriated, with certain exceptions for administrative expenses, in the State Treasury and requires that certain moneys collected to support renewable energy resources through the public goods charge are deposited into the fund and authorizes the Energy Commission to expend the moneys pursuant to the Renewable Energy Resources Program.

This bill would make conforming changes to terms used in the Renewable Energy Resources Program statutes that would be made by SB 14 of the 2009–10 Regular Session.

(2) The Public Utilities Act imposes various duties and responsibilities on the PUC with respect to the purchase of electricity and requires the PUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program (RPS program). The RPS program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year. The RPS program requires the PUC to implement annual procurement targets for each retail seller to increase its total procurement of electricity generated by eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales of electricity are procured from eligible renewable energy resources no later than December 31, 2010. Existing law requires the PUC to make a determination of the existing market cost for electricity, which PUC decisions call the market price referent, and to limit an electrical corporation's obligation to procure electricity from eligible renewable energy resources, that exceeds the market price referent, to an amount collected through the renewable energy public goods charge.

This bill would delete an existing requirement that the PUC adopt flexible rules for compliance for retail sellers. The bill would require the PUC to direct each electrical corporation to prepare a renewable energy procurement plan that includes certain matter and to review and update the plan. The bill would, to the extent feasible, require that the renewable energy procurement plan be proposed, reviewed, and adopted by the PUC pursuant to the general procurement plan process. The bill would require that an electrical corporation's proposed procurement plan include a showing that the electrical corporation will, in order to fulfill its unmet resource needs, procure resources from eligible renewable energy resources in an amount sufficient to meet its procurement

targets pursuant to the RPS program. The bill would authorize an electrical corporation to apply to the PUC for approval to construct, own, and operate an eligible renewable energy resource and require the PUC to approve the application if certain conditions are met, until corporation owned and operated resources provide 8.5% of the corporation's anticipated retail sales.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the PUC is a crime.

Because certain provisions of this bill are within the act and require action by the PUC to implement its requirements, a violation of these provisions would impose a state-mandated local program by expanding the definition of a crime.

(3) The Public Utilities Act prohibits any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the PUC a certificate that the present or future public convenience and necessity require or will require that construction, termed a certificate of public convenience and necessity. Existing law requires the PUC, in acting upon an application by an electrical corporation for a certificate of public convenience and necessity, to deem new transmission facilities necessary to the provision of electric service if the PUC finds that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the RPS program. Existing law requires the PUC, upon finding that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the RPS, to take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission (FERC) are fully reflected in any retail rates established by the PUC.

This bill would require the PUC to issue a decision on an application for a certificate of public convenience and necessity within 18 months of the filing of a completed application under specified circumstances. The bill would require the PUC, in acting upon an application by an electrical corporation for a certificate of public convenience and necessity, to deem new transmission facilities necessary to the provision of electric service if the PUC finds that new transmission facilities are reasonably necessary or appropriate to facilitate achievement of the renewables portfolio

standard. The bill would require the PUC to provide assurance of the eligibility for recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of transmission facilities in certain circumstances and to allow recovery in retail rates of any increase in transmission costs if not approved by the Federal Energy Regulatory Commission if the PUC determines the costs were prudently incurred pursuant to a specified law.

(4) Existing law establishes the Department of Fish and Game in the Natural Resources Agency, and generally charges the department with the administration and enforcement of the Fish and Game Code.

This bill would require the department to establish an internal division with the primary purpose of performing comprehensive planning and environmental compliance services with priority given to projects involving the building of eligible renewable energy resources.

(5) The existing restructuring of the electrical industry within the Public Utilities Act provides for the establishment of an Independent System Operator (ISO). Existing law requires the ISO to ensure efficient use and reliable operation of the transmission grid consistent with achieving planning and operating reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the American Electric Reliability Council. Pursuant to existing law, the ISO's tariffs are required to be approved by the FERC.

This bill would require the ISO and other California balancing authorities to work cooperatively to integrate and interconnect eligible renewable energy resources to the transmission grid by the most efficient means possible with the goal of minimizing the impact and cost of new transmission facilities needed to meet both reliability needs and the renewables portfolio standard procurement requirements, and to accomplish this in a manner that respects the ownership, business, and dispatch models for transmission facilities owned by electrical corporations, local publicly owned electric utilities, joint power agencies, and merchant transmission companies.

(6) The bill would require the Energy Commission, by July 1, 2010, to update previously conducted studies relating to determining the effective load carrying capacity of wind and solar

energy resources on the electrical grid. The bill would require the PUC to use those values in establishing the contribution of those resources toward meeting specified resource adequacy requirements.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(8) The provisions of the bill would only become operative if the bill and SB 14 of the 2009–10 Regular Session are both enacted and become effective on or before January 1, 2010.

*The people of the State of California do enact as follows:*

SECTION 1. Section 705 is added to the Fish and Game Code, to read:

705. (a) For purposes of this section, “eligible renewable energy resources” has the same meaning as in the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code).

(b) The department shall establish an internal division with the primary purpose of performing comprehensive planning and environmental compliance services with priority given to projects involving the building of eligible renewable energy resources.

(c) The internal division shall ensure the timely completion of plans pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3).

SEC. 2. Section 25500.1 is added to the Public Resources Code, to read:

25500.1. Nothing in this chapter exempts an eligible renewable energy resource, as defined in Article 16 (commencing with Section 399.11) of the Public Utilities Code, from the Fish and Game Code, including Division 3 (commencing with Section 2000) of the Fish and Game Code.

SEC. 3. Section 25740.5 of the Public Resources Code is amended to read:

25740.5. (a) The commission shall optimize public investment and ensure that the most cost-effective and efficient investments in renewable energy resources are vigorously pursued.

(b) The commission's long-term goal shall be a fully competitive and self-sustaining supply of electricity generated from renewable sources.

(c) The program objective shall be to increase, in the near term, the quantity of California's electricity generated by renewable electrical generation facilities located in this state, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.

(d) An additional objective of the program shall be to identify and support emerging renewable technologies in distributed generation applications that have the greatest near-term commercial promise and that merit targeted assistance.

(e) The Legislature recommends allocations among all of the following:

(1) Rebates, buydowns, or equivalent incentives for emerging renewable technologies.

(2) Customer education.

(3) Production incentives for reducing fuel costs, that are confirmed to the satisfaction of the commission, at solid fuel biomass energy facilities in order to provide demonstrable environmental and public benefits, including improved air quality.

(4) Solar thermal generating resources that enhance the environmental value or reliability of the electrical system and that require financial assistance to remain economically viable, as determined by the commission. The commission may require financial disclosure from applicants for purposes of this paragraph.

(5) Specified fuel cell technologies, if the commission makes all of the following findings:

(A) The specified technologies have similar or better air pollutant characteristics than renewable technologies in the report made pursuant to Section 25748.

(B) The specified technologies require financial assistance to become commercially viable by reference to wholesale generation prices.

(C) The specified technologies could contribute significantly to the infrastructure development or other innovation required to

meet the long-term objective of a self-sustaining, competitive supply of electricity generated from renewable sources.

(6) Existing wind-generating resources, if the commission finds that the existing wind-generating resources are a cost-effective source of reliable energy and environmental benefits compared with other renewable electrical generation facilities located in this state, and that the existing wind-generating resources require financial assistance to remain economically viable. The commission may require financial disclosure from applicants for the purposes of this paragraph.

(f) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code shall be transferred to the Renewable Resource Trust Fund. Moneys collected between January 1, 2007, and January 1, 2012, shall be used for the purposes specified in this chapter.

SEC. 4. Section 25742 of the Public Resources Code is amended to read:

25742. (a) Twenty percent of the funds collected pursuant to the renewable energy public goods charge shall be used for programs that are designed to achieve fully competitive and self-sustaining existing renewable electrical generation facilities located in this state, and to secure for the state the environmental, economic, and reliability benefits that continued operation of those facilities will provide during the 2007–2011 investment cycle. Eligibility for production incentives under this section shall be limited to those technologies found eligible for funds by the commission pursuant to paragraphs (3), (4), and (6) of subdivision (e) of Section 25740.5.

(b) Any funds used to support renewable electrical generation facilities located in this state pursuant to this section shall be expended in accordance with the provisions of this chapter.

(c) Facilities that are eligible to receive funding pursuant to this section shall be registered in accordance with criteria developed by the commission and those facilities shall not receive payments for any electricity produced that has any of the following characteristics:

(1) Is sold at monthly average rates equal to, or greater than, the applicable target price, as determined by the commission.

(2) Is used onsite.

(d) (1) Existing facilities located in this state generating electricity from biomass energy shall be eligible for funding and otherwise considered a renewable electrical generation facility only if they report to the commission the types and quantities of biomass fuels used.

(2) The commission shall report the types and quantities of biomass fuels used by each facility to the Legislature in the reports prepared pursuant to Section 25748.

(e) Each existing facility seeking an award pursuant to this section shall be evaluated by the commission to determine the amount of the funds being sought, the cumulative amount of funds the facility has received previously from the commission and other state sources, the value of any past and current federal or state tax credits, the facility's contract price for energy and capacity, the prices received by similar facilities, the market value of the facility, and the likelihood that the award will make the facility competitive and self-sustaining within the 2007–2011 investment cycle. The commission shall use this evaluation to determine the value of an award to the public relative to other renewable energy investment alternatives. The commission shall compile its findings and report them to the Legislature in the reports prepared pursuant to Section 25748.

SEC. 5. Section 25746 of the Public Resources Code is amended to read:

25746. (a) One percent of the money collected pursuant to the renewable energy public goods charge shall be used in accordance with this chapter to promote renewable energy and disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

(b) If the commission provides funding for a regional accounting system to verify compliance with the renewable portfolio standard by retail sellers, pursuant to subdivision (b) of Section 399.25 of the Public Utilities Code, the commission shall recover all costs from user fees.

SEC. 6. Section 25747 of the Public Resources Code is amended to read:

25747. (a) The commission shall adopt guidelines governing the funding programs authorized under this chapter, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this subdivision may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this chapter or Section 399.25 of the Public Utilities Code, shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this subdivision by the act amending this section during the 2002 portion of the 2001–02 Regular Session are declaratory of, and not a change in existing law.

(b) Funds to further the purposes of this chapter may be committed for multiple years.

(c) Awards made pursuant to this chapter are grants, subject to appeal to the commission upon a showing that factors other than those described in the guidelines adopted by the commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and registered to receive, payments or awards, including satisfying conditions specified by the commission, shall not constitute the rendering of goods, services, or a direct benefit to the commission.

(d) An award made pursuant to this chapter, the amount of the award, and the terms and conditions of the grant are public information.

SEC. 7. Section 25751 of the Public Resources Code is amended to read:

25751. (a) The Renewable Resource Trust Fund is hereby created in the State Treasury.

(b) The following accounts are hereby established within the Renewable Resource Trust Fund:

- (1) Existing Renewable Resources Account.
- (2) Emerging Renewable Resources Account.
- (3) Renewable Resources Consumer Education Account.

(c) The money in the fund may be expended, only upon appropriation by the Legislature in the annual Budget Act, for the following purposes:

(1) The administration of this article by the state.

(2) The state's expenditures associated with the accounting system established by the commission pursuant to subdivision (b) of Section 399.25 of the Public Utilities Code.

(d) That portion of revenues collected by electrical corporations for the benefit of in-state operation and development of existing and new and emerging renewable resource technologies, pursuant to Section 399.8 of the Public Utilities Code, shall be transmitted to the commission at least quarterly for deposit in the Renewable Resource Trust Fund pursuant to Section 25740.5. After setting aside in the fund money that may be needed for expenditures authorized by the annual Budget Act in accordance with subdivision (c), the Treasurer shall immediately deposit money received pursuant to this section into the accounts created pursuant to subdivision (b) in proportions designated by the commission for the current calendar year. Notwithstanding Section 13340 of the Government Code, the money in the fund and the accounts within the fund are hereby continuously appropriated to the commission without regard to fiscal year for the purposes enumerated in this chapter.

(e) Upon notification by the commission, the Controller shall pay all awards of the money in the accounts created pursuant to subdivision (b) for purposes enumerated in this chapter. The eligibility of each award shall be determined solely by the commission based on the procedures it adopts under this chapter. Based on the eligibility of each award, the commission shall also establish the need for a multiyear commitment to any particular award and so advise the Department of Finance. Eligible awards submitted by the commission to the Controller shall be accompanied by information specifying the account from which payment should be made and the amount of each payment; a summary description of how payment of the award furthers the purposes enumerated in this chapter; and an accounting of future costs associated with any award or group of awards known to the commission to represent a portion of a multiyear funding commitment.

(f) The commission may transfer funds between accounts for cashflow purposes, provided that the balance due each account is restored and the transfer does not adversely affect any of the accounts.

(g) The Department of Finance shall conduct an independent audit of the Renewable Resource Trust Fund and its related accounts annually, and provide an audit report to the Legislature not later than March 1 of each year for which this article is operative. The Department of Finance's report shall include information regarding revenues, payment of awards, reserves held for future commitments, unencumbered cash balances, and other matters that the Director of Finance determines may be of importance to the Legislature.

SEC. 8. Section 399.2.5 of the Public Utilities Code is amended to read:

399.2.5. (a) Notwithstanding Sections 1001 to 1013, inclusive, an application of an electrical corporation for a certificate authorizing the construction of new transmission facilities is necessary to the provision of electric service for purposes of Section 1003 if the commission finds that the new facility is reasonably necessary or appropriate to facilitate achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

(b) With respect to a transmission facility described in subdivision (a), the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission. These actions shall include all of the following:

(1) Making findings, where supported by an evidentiary record, that those transmission facilities provide benefit to the transmission network and are reasonably necessary or appropriate to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

(2) Directing the utility to which the generator will be interconnected, where the direction is not preempted by federal law, to seek the recovery through general transmission rates of the costs associated with the transmission facilities.

(3) Asserting the positions described in paragraphs (1) and (2) to the Federal Energy Regulatory Commission in appropriate proceedings.

(4) Providing assurance, prior to a determination of rate recovery by the Federal Energy Regulatory Commission (FERC) of those costs that are subject to FERC jurisdiction, of the eligibility for

recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of the transmission facilities.

(5) Allowing recovery in retail rates of any increase in transmission costs if the FERC does not approve recovery of those costs in the rates that are subject to FERC jurisdiction after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.

(c) (1) The commission shall approve an advice letter seeking assurance of cost recovery pursuant to paragraph (4) of subdivision (b), if either of the following is true:

(A) The new transmission line or facility is an upgrade of an existing transmission line or facility, or is a new facility within either an existing transmission right-of-way or a transmission corridor zone that has been designated by the Energy Commission pursuant to Section 25331 of the Public Resources Code, and is consistent with the priority transmission projects in the conceptual transmission plan in the final Phase 3 report produced by the public collaborative stakeholder planning process known as the Renewable Energy Transmission Initiative (RETI).

(B) Not less than 50 percent of the planned use for the capacity of the new transmission line or facility is for interconnecting eligible renewable energy resources, as determined by the Independent System Operator or an electrical corporation, and all interconnection requests for that transmission line or facility are for generation facilities that comply with the greenhouse gases emission performance standard established pursuant to Chapter 3 (commencing with Section 8340) of Division 4.1.

(2) Approval of an advice letter pursuant to paragraph (1) is not binding upon the commission in making its determination whether or not to approve an application for a certificate of public convenience and necessity pursuant to Chapter 5 (commencing with Section 1001).

SEC. 9. Section 399.13 is added to the Public Utilities Code, to read:

399.13. (a) (1) The commission shall direct each electrical corporation to prepare a renewable energy procurement plan that includes the matter in paragraph (3), to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the

commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(2) The commission shall adopt, by rulemaking, all of the following:

(A) A process that provides criteria for the rank ordering and selection of least-cost and best-fit eligible renewable energy resources to comply with the California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall take into account all of the following:

(i) Estimates of indirect costs associated with needed transmission investments and ongoing electrical corporation expenses resulting from integrating and operating eligible renewable energy resources.

(ii) The cost impact of procuring the eligible renewable energy resources on the electrical corporation's electricity portfolio.

(iii) The viability of the project to construct and reliably operate the eligible renewable energy resource, including the developer's experience, the feasibility of the technology used to generate electricity, and the risk that the facility will not be built, or that construction will be delayed, with the result that electricity will not be delivered as required by the contract.

(B) Rules permitting retail sellers to apply excess procurement in one year to subsequent years.

(C) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators. A contract for the purchase of electricity generated by an eligible renewable energy resource shall, at a minimum, include the renewable energy credits associated with all electricity generation specified under the contract. The standard terms and conditions shall include the requirement that, no later than six months after the commission's approval of an electricity purchase agreement entered into pursuant to this article, the following information about the agreement shall be disclosed by the commission: party names, resource type, project location, and project capacity.

(D) An appropriate minimum margin of procurement above the minimum procurement level necessary to comply with the renewables portfolio standard to mitigate the risk that renewable

projects planned or under contract are delayed or canceled. Nothing in this paragraph shall preclude an electrical corporation from voluntarily proposing a margin of procurement above the appropriate minimum margin established by the commission.

(3) Consistent with the goal of increasing California's reliance on eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of eligible renewable energy resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

(B) Potential compliance delays related to the conditions described in paragraph (4) of subdivision (b) of Section 399.15.

(C) A bid solicitation setting forth the need for eligible renewable energy resources of each deliverability characteristic, required online dates, and locational preferences, if any.

(D) A status update on the development schedule of all eligible renewable resources currently under contract.

(E) Consideration of mechanisms for price adjustments associated with the costs of key components for eligible renewable energy resource projects with online dates more than 24 months after the date of contract execution.

(F) An assessment of the risk that an eligible renewable energy resource will not be built, or that construction will be delayed, with the result that electricity will not be delivered as required by the contract.

(4) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration.

(5) In soliciting and procuring eligible renewable energy resources for California-based projects, each electrical corporation shall give preference to renewable energy projects that provide environmental and economic benefits to communities afflicted with poverty or high unemployment, or that suffer from high emission levels of toxic air contaminants, criteria air pollutants, and greenhouse gases.

(b) A retail seller may enter into a combination of long- and short-term contracts for delivery of electricity and associated

renewable energy credits. The commission may authorize a retail seller to enter into a contract of less than 10 years' duration with an eligible renewable energy resource, if the commission has established, for each retail seller, minimum quantities of eligible renewable energy resources to be procured through contracts of at least 10 years' duration.

(c) The commission shall review and accept, modify, or reject each electrical corporation's renewable energy procurement plan prior to the commencement of renewable procurement pursuant to this article by an electrical corporation.

(d) Unless previously preapproved by the commission, an electrical corporation shall submit a contract for the generation of an eligible renewable energy resource to the commission for review and approval consistent with an approved renewable energy procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition among the bidders, the commission shall direct the electrical corporation to renegotiate the contracts or conduct a new solicitation.

(e) The commission shall establish milestones in the development of the project to evaluate the potential for compliance with the adopted renewable energy procurement plan and a set of actions that will occur as a result of not meeting those milestones. These actions may include, but shall not be limited to, determining a cure period for failure to meet milestones, a suspense period on the contract online date for events beyond the developer's control that cause a failure to meet milestones, allowing other developers that are prepared to go forward to move ahead of suspended contracts, and the forfeiture of deposits.

(f) If an electrical corporation fails to comply with a commission order adopting a renewable energy procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance. The commission shall enforce comparable penalties on any retail seller that is not an electrical corporation that fails to meet the procurement targets established pursuant to Section 399.15.

(g) (1) The commission may authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for deliveries of eligible renewable energy resources to satisfy the retail seller's renewables portfolio standard procurement requirements. The commission may not require any person or

corporation to act as a procurement entity or require any party to purchase eligible renewable energy resources from a procurement entity.

(2) Subject to review and approval by the commission, the procurement entity shall be permitted to recover reasonable administrative and procurement costs through the retail rates of end-use customers that are served by the procurement entity and are directly benefiting from the procurement of eligible renewable energy resources.

(h) Procurement and administrative costs associated with contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article and approved by the commission shall be deemed reasonable and shall be recoverable in rates.

(i) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives pursuant to Section 25742 of the Public Resources Code, including work performed to qualify, receive, or maintain production incentives are “public works” for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 10. Section 399.14 of the Public Utilities Code is repealed.

SEC. 11. Section 399.14 is added to the Public Utilities Code, to read:

399.14. (a) (1) An electrical corporation may, pursuant to Chapter 5 (commencing with Section 1001), and in order to meet its renewables portfolio standard procurement requirements, apply to the commission for approval to construct, own, and operate an eligible renewable energy resource.

(2) If the proposed eligible renewable energy resource complies with the requirements of subdivision (b), the commission shall approve an application filed pursuant to paragraph (1), until the commission has approved applications for eligible renewable energy resources for the electrical corporation that, when constructed and operating, will provide 8.25 percent of the electrical corporation’s anticipated retail sales by December 31, 2020.

(3) The commission may approve additional applications for eligible renewable energy resources once the commission has

approved sufficient applications for eligible renewable energy resources for the electrical corporation that, when constructed and operating, will provide 8.25 percent of the electrical corporation's anticipated retail sales by December 31, 2020.

(b) The commission shall not approve any application by an electrical corporation pursuant to subdivision (a) unless both of the following conditions are met:

(1) The eligible renewable energy resource utilizes a viable technology at a reasonable cost.

(2) The eligible renewable energy resource provides comparable or superior value to ratepayers when compared to then recent or contemporaneous solicitations for generation provided by eligible renewable energy resources.

(c) In approving any application by an electrical corporation for approval to construct, own, and operate an eligible renewable energy resource, the commission shall apply traditional cost-of-service ratemaking, including reasonableness review after construction is completed.

SEC. 12. Section 399.26 is added to the Public Utilities Code, to read:

399.26. (a) In order for the state to meet the requirements of the California Renewables Portfolio Standard Program, substantially increased amounts of electricity generated by eligible renewable energy resources must be integrated with, and interconnected to, the transmission grid that is either owned by, or under the operational control of, the local publicly owned electric utilities and the transmission grid that is under the operational control of the Independent System Operator.

(b) The Independent System Operator and the balancing authority of each area in California shall do both of the following:

(1) Work cooperatively to integrate and interconnect eligible renewable energy resources to the transmission grid by the most efficient means possible with the goal of minimizing the impact and cost of new transmission needed to meet both reliability needs and the renewables portfolio standard procurement requirements.

(2) Accomplish the requirements of paragraph (1) in a manner that respects the ownership, business, and dispatch models for transmission facilities owned by electrical corporations, local publicly owned electric utilities, joint power agencies, and merchant transmission companies.

(c) The Independent System Operator shall seek any approvals from the Federal Energy Regulatory Commission that are necessary to accomplish the goals and requirements of this article.

(d) In order to maintain electric service reliability and to minimize the construction of fossil fuel electrical generation capacity to support the integration of intermittent renewable electrical generation into the electrical grid, by July 1, 2010, the Energy Commission shall update its previously conducted studies to determine the effective load carrying capacity of wind and solar energy resources on the California electrical grid. The commission shall use those effective load carrying capacity values in establishing the contribution of wind and solar energy resources toward meeting the resource adequacy requirements established pursuant to Section 380.

(e) The California Public Utilities Commission and the California Energy Commission shall implement this article so that it is compatible with, and does not preclude achievement of, the combined heat and power system electricity generation objective identified by the State Air Resources Board in its scoping plan implementing the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), including maintaining existing levels of efficient combined heat and power systems and the installation of additional megawatts of efficient combined heat and power systems that meet the goals for reducing emissions of greenhouse gases provided, however, nothing in this provision shall change the definition of renewable electrical generation facility. New combined heat and power systems shall be sized to meet all or a portion of the eligible customer-generators onsite demand.

SEC. 13. Section 454.5 of the Public Utilities Code is amended to read:

454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. Each electrical corporation shall file a proposed procurement plan with the commission not later than 60 days after the commission specifies the allocation of electricity. The proposed procurement plan shall

specify the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After the commission's adoption of a procurement plan, the commission shall allow not less than 60 days before the electrical corporation resumes procurement pursuant to this section.

(b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:

(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and electricity-related products and the remaining open position to be served by spot market transactions.

(2) A definition of each electricity product, electricity-related product, and procurement-related financial product, including support and justification for the product type and amount to be procured under the plan.

(3) The duration of the plan.

(4) The duration, timing, and range of quantities of each product to be procured.

(5) A competitive procurement process under which the electrical corporation may request bids for procurement-related services, including the format and criteria of that procurement process.

(6) An incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by that mechanism, their respective procurement benchmarks, and other parameters needed to determine the sharing of risks and benefits.

(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

(9) A showing that the procurement plan will achieve the following:

(A) The electrical corporation shall, in order to fulfill its unmet resource needs, procure resources from eligible renewable energy resources in an amount sufficient to meet its procurement requirements pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3).

(B) The electrical corporation will create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reduction products.

(C) The electrical corporation will first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

(10) The electrical corporation's risk management policy, strategy, and practices, including specific measures of price stability.

(11) A plan to achieve appropriate increases in diversity of ownership and diversity of fuel supply of nonutility electrical generation.

(12) A mechanism for recovery of reasonable administrative costs related to procurement in the generation component of rates.

(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement plan approved by the commission shall contain one or more of the following features, provided that the commission may not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of an electrical corporation's creditworthiness:

(1) A competitive procurement process under which the electrical corporation may request bids for procurement-related services. The commission shall specify the format of that procurement process, as well as criteria to ensure that the auction

process is open and adequately subscribed. Any purchases made in compliance with the commission-authorized process shall be recovered in the generation component of rates.

(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that limit the risk and reward of an electrical corporation.

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing

accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5-percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.

(5) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.

(e) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement plan.

(f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to Section 631.

(g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be

provided access to this information under confidentiality procedures authorized by the commission.

(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.

(i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.

(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

SEC. 14. Section 1005.1 is added to the Public Utilities Code, to read:

1005.1. (a) The commission shall issue a decision on an application for a certificate within 18 months of the date of filing of the completed application, when all of the following are true:

(1) The application is for a certificate for building or upgrading an electrical transmission line that the commission finds necessary

to provide transmission to load centers for electricity generated in a high-priority renewable energy zone or is reasonably necessary to facilitate achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11) of Chapter 2.3.

(2) The commission has considered all of the following:

(A) The utilization of rights-of-way by upgrading existing transmission facilities instead of building new transmission facilities, where technically and economically justifiable.

(B) The expansion of existing rights-of-way, if technically and economically feasible, when construction of new transmission lines is required.

(C) The creation of new rights-of-way when justified by environmental, technical, and economic reasons.

(D) The availability of cost-effective alternatives to transmission, such as energy efficiency measures and distributed generation.

(3) The commission has not expressly found any of the following:

(A) That the investment is not reasonable and necessary to maintain or enhance reliability of the transmission grid.

(B) That the building or upgrading of the electrical transmission line will not maintain or enhance efficient use of the transmission grid.

(C) That the transmission line fails to meet other applicable standards and requirements for approval and construction.

(b) An extension of time may be granted by the commission if it finds the extension is necessary for completion of review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

SEC. 15. This bill shall only become operative if this bill and SB 14 are both enacted and become effective on or before January 1, 2010.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

the meaning of Section 6 of Article XIII B of the California Constitution.











Approved \_\_\_\_\_, 2009

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*Governor*